United Nations A/HRC/34/66

General Assembly

Distr.: General
22 February 2017

Original: English

Human Rights Council
Thirty-fourth session
27 February-24 March 2017
Agenda item 4
Human rights situations that require the Council's attention

Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*

Note by the Secretariat

The present report, submitted to the Human Rights Council pursuant to Council resolution 28/22, is the first to be submitted by the current mandate holder since his appointment in August 2016.

During the reporting period, two nuclear tests and repeated missile launches by the Democratic People's Republic of Korea deepened its international isolation. At the same time, the country took some positive steps to engage with some United Nations human rights mechanisms.

The Special Rapporteur continues to build on the two-track approach advocated by his predecessor. The approach combines the demand to allocate responsibility for human rights violations with the need to pursue dialogue with the authorities and other actors to improve the human rights situation in the country. The Special Rapporteur appreciates measures taken by different actors to protect human rights in the Democratic People's Republic of Korea.

* The report was submitted after the deadline in order to reflect recent developments.

GE.17-02918(E)

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I. Introduction

1. The present report, submitted to the Human Rights Council pursuant to Council resolution 28/22, is the first to be submitted by the current mandate holder since his appointment in August 2016. The outcome of the work of the group of independent experts who were appointed pursuant to Council resolution 31/18 to outline options for accountability for human rights violations in the Democratic People's Republic of Korea, in particular where such violations amount to crimes against humanity as found by the commission of inquiry on human rights in the Democratic People's Republic of Korea in 2014 (A/HRC/25/63), is presented in an addendum (A/HRC/34/66/Add.1). In his report, the Special Rapporteur briefly reviews key developments concerning the human rights situation in the country, including political and security developments, the impact of the August 2016 flood in the north-eastern provinces and the Government's engagement with some of the United Nations human rights mechanisms. He then discusses human rights issues which were brought to his attention during his first mission to North-East Asia. Finally, he discusses the value of the two-track approach in addressing the human rights situation in the Democratic People's Republic of Korea with reference to diverse efforts by a range of actors.[1]

2. Two seemingly contradictory developments characterized the situation of human rights in the Democratic People's Republic of Korea in 2016. On the one hand, the country's repeated nuclear and missile tests deepened its international isolation, halting international dialogue on key human rights issues and hindering the delivery of humanitarian aid. On the other hand, the Democratic People's Republic of Korea took a few important steps to fulfil some of its international human rights obligations, including the ratification of the Convention on the Rights of Persons with Disabilities on 6 December 2016 and the submission of treaty reports to the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women. Nevertheless, access to the country by United Nations human rights mechanisms, including the Special Rapporteur, to assess the impact of these steps on the ground has not been granted.

II. Latest developments

A. Political and security situation

Pursuance of simultaneous economic and nuclear development

3. In 2016, the authorities in the Democratic People's Republic of Korea continued to consolidate domestic political power around Kim Jong Un as the Supreme Leader. In May 2016, the Workers' Party of Korea held its seventh congress, the first to be held since 1980. Mr. Kim, elected as Chair of the Party, outlined policies of simultaneously advancing economic development and nuclear capability.[2] The congress also led to the adoption of a five-year strategy for economic development. Notably, in his presentation of the five-year strategy Mr. Kim did not acknowledge the increasing trend of marketization throughout the country, nor did he reflect on the potential impact of sanctions imposed by the Security

[1] The report of the Special Rapporteur and the report of the group of independent experts on accountability were shared with the Government of the Democratic People's Republic of Korea for factual comments prior to publication.

[2] Korea Central News Agency (Pyongyang), "Kim Jong Un makes report on work of WPK Central Committee at its 7th Congress", 7 May 2016.

Council. In June 2016, the thirteenth Supreme People's Assembly held its fourth session. The Assembly replaced the National Defence Commission, the highest military decision-making body, with a commission of State affairs. Mr. Kim was also elected as Chair of the new commission. These political events were held against the backdrop of two nuclear tests in one year (the country's fourth nuclear test was conducted on 6 January and its fifth on 9 September 2016) and several launches of missiles of various ranges.

4. Mr. Kim reflected again on the policy of simultaneous development of the economy and of nuclear weapons in his 2017 New Year address. First, he emphasized the importance of concentrating national efforts on the implementation of the five-year strategy for economic development. He described the areas to be developed in some detail, making repeated references to the improvement of people's livelihood and the importance of education, public health and culture. At the same time, he stressed that the country would "continue [to] build up [its] self-defence capability, the pivot of which is the nuclear forces, and the capability for pre-emptive strike", stating that the country had "entered the final stage of preparation for the test launch of [an] intercontinental ballistic missile".[3]

Increased tensions and isolation

5. The repeated nuclear tests and missile launches in 2016 contributed to further isolating the country from the international community. The tests violated Security Council resolutions and significantly raised tensions on the Korean peninsula and in the North-East Asian region more broadly. Following each nuclear test, the Council adopted a resolution to further tighten sanctions against the Democratic People's Republic of Korea.[4] These sanctions expanded arms embargo and non-proliferation measures, including on some dual-use items. The sanctions also aimed to restrict the country's capacity to earn foreign currency, including by imposing an annual cap on coal exports. In resolution 2321 (2016), the Council reduced the possibilities for the livelihood purpose exception, for example by adding further requirements for applying it to coal exports. Some States also adopted unilateral measures, increasingly restricting contact between people and exchange of goods between the Democratic People's Republic of Korea and other countries. In February 2016, the Republic of Korea closed the Kaesong industrial complex, where citizens of the Democratic People's Republic of Korea worked for companies from the Republic of Korea. The Special Rapporteur notes that the sanctions imposed by the Security Council are not intended to affect the livelihood of ordinary people, and the international community should monitor the potentially negative impact of the sanctions closely.

Impact on human rights dialogue

6. Rising tensions and increased isolation hindered the advancement of the human rights dialogue between the Democratic People's Republic of Korea and other countries. Reunion events to allow meetings between family members separated by the armistice line between the two Koreas have not been held since October 2015. In reaction to "autonomous measures"[5] adopted by Japan after the January 2016 nuclear test and the February launch by the Democratic People's Republic of Korea using ballistic missile technology, the Democratic People's Republic of Korea announced that it would stop the investigations on all Japanese nationals and dissolved the special investigation committee established under the agreement concluded in Stockholm in 2014, in which the country had committed to

[3] Permanent Mission of the Democratic People's Republic of Korea to the United Nations, press release No.1/01/17, "Kim Jong Un's New Year address", 2 January 2017.

[4] Resolutions 2270 (2016) and 2321 (2016).

[5] See http://www.mofa.go.jp/a_o/na/kp/page3e_000628.html.

conduct comprehensive investigations on all Japanese nationals including victims of abductions and other missing persons.

7. Notably, in his 2017 New Year remarks, Mr. Kim referred to unification of the two Koreas. He stated that "all countrymen in the north, in the south and abroad should do something to make this year a meaningful year of a new phase in independent reunification".[6] He further noted the forty-fifth anniversary of the joint statement of 4 July 1972 and the tenth anniversary of the declaration signed by the two Koreas on 4 October 2007. The Special Rapporteur hopes that these anniversaries could offer an opportunity for productive dialogue to address outstanding human rights issues.

B. Impact of the August 2016 flood

8. In late August 2016, Typhoon Lionrock caused heavy rains over the north-eastern part of the Democratic People's Republic of Korea. The Central Committee of the Workers' Party of Korea described the storm as the "strongest … and heaviest downpour in meteorological observation since the liberation of Korea in 1945".[7] The storm resulted in large-scale flooding and landslides that affected residential areas and farmland in North Hamgyong and Ryanggang provinces. Failure of river embankments and discharge from the Sodusu power plant possibly aggravated the impact of the natural disaster.[8]

9. As a result of the flooding, 138 people were killed and 400 remained missing as of October 2016.[9] It is estimated that 600,000 people were affected, with 140,000 of them severely affected and 70,000 displaced. About 30,000 houses were reportedly damaged.[10] More than 180 road sections and more than 60 bridges were destroyed. More than 27,400 hectares of cultivated land were reportedly washed away or submerged.[11]

10. The Government of the Democratic People's Republic of Korea requested international humanitarian agencies in the country to assist in responding to the humanitarian situation. The Government also invited United Nations agencies to participate in a joint assessment mission to the affected areas from 6 to 9 September 2016.[12] Another mission was undertaken from 18 to 22 November. While these missions visited three (Yonsa, Musan and Hoeryong) of the six most affected areas, they were not able to visit the

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[6] Permanent Mission of the Democratic People's Republic of Korea to the United Nations, press release No. 1/01/17.

[7] Korea Central News Agency (Pyongyang), "WPK Central Committee calls all people to turn out in operations to recover from flood damage in northern area", 11 September 2016 and "People-first principle is life and soul of WPK", 12 September 2016.

[8] Office of the United Nations Resident Coordinator in the Democratic People's Republic of Korea, *Joint Assessment: North Hamgyong Floods* (Pyongyang, 11 September 2016), available from http://reliefweb.int/sites/reliefweb.int/files/resources/20160916%20DPRK_North%20Hamgyong%20Floods%20Joint%20Assessment%20Report.pdf. See also http://kp.one.un.org/content/unct/dprk/en/home/emergency-response/floods-2016.html; www.rfa.org/korean/in_focus/food_international_org/nkflood-09212016161854.html; and www.dailynk.com/korean/read.php?catald=nk04505&num=109176.

[9] Office of the United Nations Resident Coordinator in the Democratic People's Republic of Korea, press release, "Torrential rains and flooding bring devastation to DPRK", 14 October 2016.

[10] Office of the United Nations Resident Coordinator in the Democratic People's Republic of Korea, *Joint Review Mission to Flood-Affected Areas in North Hamgyong, 18-23 November* (Pyongyang, 23 November 2016), available from http://reliefweb.int/sites/reliefweb.int/files/resources/Joint%20Review%20Mission%20to%20Flood%20Affected%20Areas%20Nov%202016%20Report.pdf.

[11] Korea Central News Agency (Pyongyang), "Korean army and people all out for flood recovery campaign in North Hamgyong Province", 14 September 2016.

[12] *Joint Assessment North Hamgyong Floods*.

rest (Onsong, Kyongwon and Kyonghung).[13] The Special Rapporteur reiterates his call on the Government of the Democratic People's Republic of Korea to ensure full access for humanitarian workers to those in need, including persons in detention facilities and prisons.[14]

11. On 10 September, the Central Committee of the Workers' Party of Korea sent an appeal to all party members, service personnel of the Korean People's Army and others, urging them to participate in recovery operations.[15] Reportedly, 230,000 civilians and 140,000 soldiers were mobilized to support reconstruction efforts. As of late November, over 3,000 buildings for almost 12,000 families had reportedly been constructed.[16]

12. The damage from the flood had an impact on the human rights of people in the affected area in multiple ways. Access to water and sanitation, which is critical for the right to an adequate standard of health, was severely limited with affected communities reportedly continuing to depend on hand pumps, dug wells and water purification tablets as of December 2016.[17] Forty-five health facilities were damaged, with serious implications for the availability of health care for the local population.[18] Damage to arable land, with the destruction of crops and kitchen gardens, had serious implications, especially for the right to food of those relying on agriculture for their livelihood.[19]

13. With the destruction of 107 primary/middle schools, kindergartens and nurseries, 8,360 students were out of school.[20] The authorities prioritized the rehabilitation of nurseries, kindergartens and schools damaged by the flood and undertook a campaign to supply consumer goods to the affected areas.[21] The need to continue the provision of food to nurseries and kindergartens was among the needs highlighted by provincial authorities during the joint United Nations-Government review mission in November 2016.[22]

14. Significant efforts have been made to respond to the natural disaster. Nevertheless, it is not clear whether sufficient humanitarian assistance has reached all those in need. Infrastructure and roads remain inadequate in the affected area, which is mountainous and home to several remote communities.[23] The deployment of a large number of personnel for the reconstruction efforts allegedly burdened already limited local food supplies and health facilities.[24]

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[13] *Joint Review Mission to Flood-Affected Areas in North Hamgyong.*

[14] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20543&LangID=E.

[15] Korea Central News Agency (Pyongyang), "WPK Central Committee" and "People-first principle".

[16] *Joint Review Mission to Flood-Affected Areas in North Hamgyong*, p. 5.

[17] Office of the United Nations Resident Coordinator in the Democratic People's Republic of Korea, "DPRK floods: humanitarian dashboard", Pyongyang, 10 December 2016, available from http://reliefweb.int/report/democratic-peoples-republic-korea/dprk-floods-humanitarian-dashboard-10-december-2016.

[18] United Nations Children's Fund (UNICEF), "Situation update: Democratic People's Republic of Korea North Hamgyong floods response", 28 October 2016.

[19] Food and Agriculture Organization of the United Nations (FAO), Global Information and Early Warning System on Food and Agriculture, Country Brief: Democratic People's Republic of Korea, 16 December 2016, available from www.fao.org/giews/countrybrief/country/PRK/pdf/PRK.pdf.

[20] UNICEF, "Situation update".

[21] Korea Central News Agency (Pyongyang), "Priority given to educational work in disaster areas of DPRK", 5 October 2016 and "More consumer goods sent to disaster areas of DPRK", 5 October 2016.

[22] *Joint Review Mission to Flood-Affected Areas in North Hamgyong*, p. 5.

[23] UNICEF, "Situation update".

[24] Humanitarian dashboard; see also www.asiapress.org/korean/all/nk-kore-flood-damage-02/.

15. The situation of detainees at various law enforcement detention centres and correction facilities is also of concern. There exists at least one prison camp (prison camp No. 12) in Hoeryong city, which was among the most severely affected areas.[25] No information is available concerning the impact of the flood on political prison camp No. 25, which is reportedly located in Chongjin city, North Hamgyong Province.[26]

16. The Special Rapporteur notes with concern that international funding for emergency relief remains inadequate. As of 10 December 2016, the United Nations country team had mobilized only 38 per cent of the $28 million required to respond to the emergency.[27] Similarly, the International Federation of Red Cross and Red Crescent Societies had reportedly secured only 25 per cent of its September 2016 emergency appeal for 15 million Swiss francs.[28] Multiple factors could be at work to make the raising of funds for the emergency in the Democratic People's Republic of Korea challenging, including crises in other parts of the world as well as increased tensions on the Korean peninsula. Nevertheless, the Special Rapporteur stresses that political or security concerns should not prevent the provision of life-saving humanitarian aid.

C. Engagement of the Democratic People's Republic of Korea with United Nations human rights mechanisms

17. The Special Rapporteur has been encouraged by increasing engagement of the Government of the Democratic People's Republic of Korea with United Nations human rights mechanisms. In line with commitments made during the second cycle of the universal periodic review, the Democratic People's Republic of Korea submitted national reports to the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child in April and May 2016, respectively. The Committee on the Rights of the Child will review the report in September 2017 and the Committee on the Elimination of Discrimination against Women will do so in October. Both occasions will provide an important opportunity to move the human rights agenda forward with the Government of the Democratic People's Republic of Korea. These processes also provide a significant opportunity for civil society organizations to push for effective progress on the ground.

18. On 6 December 2016, the Democratic People's Republic of Korea ratified the Convention on the Rights of Persons with Disabilities. The Special Rapporteur welcomed the ratification as a useful step forward towards implementing accepted recommendations emanating from the 2014 universal periodic review.[29] The Special Rapporteur on the rights of persons with disabilities similarly congratulated the country on the ratification,

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[25] Korea Institute for National Unification, *White Paper on Human Rights in North Korea: 2016* (Seoul, 2016), p. 105. The Committee for Human Rights in North Korea, a non-governmental organization based in Washington, D.C., reported that, on the basis of satellite images, prison camp No. 12 was affected by the flood, which cut off the roads to the camp and destroyed crops. Joseph S. Bermudez Jr. and Greg Scarlatoiu, *North Korea: Flooding at Kyo-wa-so No. 12, Jongo-ri, 16 September 2016* (Committee for Human Rights in North Korea, 2016), available from www.hrnk.org/publications/hrnk-publications.php.

[26] Joseph S. Bermudez Jr., Andy Dinville and Mike Eley, *North Korea: Camp No. 25-Update 2, 29 November 2016* (Committee for Human Rights in North Korea, 2016), available from www.hrnk.org/publications/hrnk-publications.php.

[27] Humanitarian dashboard.

[28] See www.ifrc.org/en/news-and-media/press-releases/asia-pacific/korea-democratic-peoples-republic-of/ifrc-president-konoe-highlights-continued-humanitarian-needs-of-flood-survivors-following-dprk-visit-/.

[29] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21051&LangID=E.

reiterating her offer to provide technical advice in the course of implementation of the treaty. The ratification of the Convention brought the number of core human rights treaties ratified by the Democratic People's Republic of Korea to five.

19. The Special Rapporteur also welcomes the integration of the human rights-based approach in the United Nations strategic framework 2017-2021, setting out agreed priorities of the United Nations agencies operating in the Democratic People's Republic of Korea and co-signed with the Government.[30] The Special Rapporteur further welcomes the work, referred to in the strategic framework, by the United Nations country team to support the implementation of the recommendations accepted during the 2014 universal periodic review and the country's obligations under international human rights treaties. The Special Rapporteur is ready to work closely with the United Nations country team together with the Office of the United Nations High Commissioner for Human Rights (OHCHR) to follow up on the implementations of the recommendations accepted during the universal periodic review and other human rights treaty obligations.

III. Issues of particular concern

20. During his first visit to the Republic of Korea and Japan, in November 2016, the Special Rapporteur met with individuals who had recently left the Democratic People's Republic of Korea and who provided first-hand descriptions of their experiences in the country.[31] The Special Rapporteur also received information concerning the human rights situation in the Democratic People's Republic of Korea from various non-governmental organizations, government agencies and the field-based structure of OHCHR-Seoul. The Special Rapporteur thanks OHCHR for preparing and supporting the mission. This section highlights some of the human rights issues raised during the visit.

Political prison camps

21. The Special Rapporteur received information about the human rights situation in political prison camps. Although the Government of the Democratic People's Republic of Korea has denied the existence of these facilities, large-scale prison camps where people accused of serious crimes of a political nature are detained have been extensively documented by the commission of inquiry (see A/HRC/25/63, paras. 59-61) and other sources. At least four camps reportedly remain in operation (political prison camps Nos. 14, 15, 16 and 25) and another camp (No. 18) is possibly still operational.[32] Families are not informed of the whereabouts or fate of relatives who are sent to these prisons. The lack of information about the situation of individuals imprisoned in political prison camps, whose number is estimated to be between 80,000 and 120,000 (ibid., para. 61), means that their detention in many cases may amount to an enforced disappearance under international law.[33] The Government has stated in the past that "'political prison camps' did not exist and

[30] See http://kp.one.un.org/content/unct/dprk/en/home/news/UNSF-launch2017.html.

[31] During his mission, the Special Rapporteur was informed that persons who leave the Democratic People's of Republic of Korea and arrive in the Republic of Korea are held in Government-run facilities for a period of time.

[32] Korea Institute for National Unification, *White Paper 2016*, p. 400; Database Center for North Korean Human Rights, List of officers, detainees and missing persons in political prison camps in the Democratic People's Republic of Korea, Seoul, 2016, p. 11; Bermudez, *North Korea: Camp No. 25*.

[33] The Declaration on the Protection of All Persons from Enforced Disappearance states that "enforced disappearances" occur when "persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect,

were a complete fabrication. Those persons sentenced to the penalty of reform through labour under the country's Criminal Law served their terms in reform institutions" (see A/HRC/27/10, para. 60). The Special Rapporteur stresses the importance of access to these "reform institutions" by United Nations human rights mechanisms and relevant international civil society organizations. He also emphasizes the need to receive substantive information from the Government on the number, structure and conditions of detention in these prison camps.[34] It is imperative that new strategies to tackle this very serious and alarming human rights issue be elaborated and implemented.

Abductions and separated families

22. During his visit, the Special Rapporteur was also informed about cases involving the Democratic People's Republic of Korea in which individuals from the Republic of Korea and Japan were abducted or went missing. Although these cases occurred decades ago, the lack of reliable information about the fate of people who were abducted or went missing continues to have a serious impact on their relatives. In the case of Japan, under the 2014 Stockholm agreement, the Democratic People's Republic of Korea committed to establish a special committee to investigate all Japanese nationals, including the whereabouts of Japanese individuals who were abducted and Japanese nationals who had accompanied their Korean spouses to the Democratic People's Republic of Korea. Nevertheless, in response to the "autonomous measures" adopted by Japan in protest of the January nuclear test and February launch using ballistic missile technology, the Democratic People's Republic of Korea announced that the comprehensive investigation into the fate of all the Japanese nationals that had been under way under the Stockholm agreement would be totally stopped and the special investigation committee dissolved as of 12 February 2016.[35] The Special Rapporteur urges the authorities in the Democratic People's Republic of Korea to resume the investigation and clarify the fate of abductees, and urges the Government of Japan to resume dialogue with a view to reaching a prompt resolution to this issue.

23. The Special Rapporteur also talked to individuals who had been separated from their relatives as a result of the Korean War. He noted that involuntarily separated family members on both sides of the armistice line had reached old age, and urged both Governments to make urgent and genuine efforts to enable them to learn the fate of their

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consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law".

[34] The Democratic People's Republic of Korea is a State party to five legally binding human rights treaties: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. These instruments protect a wide range of rights related to the conditions of detention. The United Nations has also adopted standards that outline specific measures for the protection of the rights of persons in detention. While these standards are not legally binding, they provide authoritative guidance on the treatment of detainees. These standards include the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Code of Conduct for Law Enforcement Officials, the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

[35] Rodong Shinmun (Pyongyang), "Japan assailed for scrapping DPRK-Japan intergovernmental agreement", 15 February 2016.

relatives. Such efforts should not be delayed or subject to political developments, but should take place on humanitarian and human rights grounds.

Access to information

24. The Special Rapporteur was informed that in the last few years the authorities of the Democratic People's Republic of Korea had maintained or increased restrictions on access to information from outside the country. At the same time, he was also informed that, compared with a decade ago, more people are reportedly able to access information from abroad and to communicate with those abroad despite the stringent restrictions. Some reportedly use USB sticks or memory cards to share audiovisual materials smuggled into the Democratic People's Republic of Korea or listen to radio stations broadcasting from China and the Republic of Korea. Brokers in the border area reportedly mediate international telephone calls, including to relatives in the Republic of Korea. The cost of these communications reportedly remains very high and conversation for longer than a few minutes is increasingly difficult owing to the fear of being detected by the authorities. Still, these communication channels reportedly allow some members of separated families to stay in touch and enable some individuals in the Republic of Korea to send remittances to their relatives in the Democratic People's Republic of Korea. The Special Rapporteur encourages the Government of the Democratic People's Republic of Korea to regard these important dynamics as opportunities to engage with its own people and to pursue greater integration and cooperation with the rest of the world.

Right to food

25. The commission of inquiry documented the devastating consequences of the famine that occurred in the Democratic People's Republic of Korea in the mid-1990s. Despite reports of an improvement in food availability in recent years, natural and human-made conditions that render a large part of the population food insecure reportedly persist. The Food and Agriculture Organization of the United Nations maintains the Democratic People's Republic of Korea on the list of 37 countries that require external assistance for food, mainly owing to the overall tight food supply and the August 2016 flood that affected arable land.[36] The Special Rapporteur was informed that many households now reportedly rely on private commercial transactions to secure their food. Nevertheless, the ambiguous legal status of these transactions contributes to food insecurity as the ability to pursue commercial activities often depends on ad hoc decisions by local officials and on the amount of bribes those conducting the activities are able to pay. In 2016, compulsory labour mobilization by the Workers' Party of Korea, including during the 70-day campaign and the 200-day campaign undertaken before and after the Seventh Party Congress, allegedly limited the capacity of residents to engage in commercial activities critical for their food security.[37] Given that many people do not receive food rations, or receive an insufficient amount of rations,[38] the restrictions on trading activities have a direct impact on their food security. The lack of reference in the five-year strategy for economic development adopted during the May 2016 Party Congress to private commercial and market activities, which are increasingly essential for the food security of residents in the country, may have negative implications for their enjoyment of this fundamental right.

[36] FAO, "Countries requiring external assistance for food", December 2016, available from www.fao.org/giews/country-analysis/external-assistance/en/.

[37] Asia Press, discussion with OHCHR-Seoul, 11 May 2016, note on file with OHCHR-Seoul; Kang Mi Jin, "Anger mounts as police crush street sales", *Daily NK* (Seoul), 9 March 2016, available from www.dailynk.com/english/read.php?num=13789&catald=nk01500.

[38] Korea Institute for National Unification, *White Paper 2016*, p. 261.

Overseas workers

26. Most of the stakeholders whom the Special Rapporteur met during his visit to North-East Asia raised the issue of overseas workers. These workers reportedly constitute a significant source of foreign currency for the Government of the Democratic People's Republic of Korea as a substantial portion (60-90 per cent) of their salaries is reportedly deducted by the State in the form of "loyalty funds" and operating costs of the North Korean companies deploying the workers.[39] At one point, at least 45 countries were reported as hosting workers from the Democratic People's Republic of Korea.[40] While working abroad, workers reportedly remain under tight supervision of officials from the Democratic People's Republic of Korea, without freedom of movement, expression and association. Workers are allegedly subjected to serious violations of international labour standards, including long working hours, delayed and below-minimum-wage payments and lack of safety measures. Despite these violations, the Special Rapporteur was informed that being sent abroad is perceived as a unique opportunity to earn foreign currency, and people reportedly continue to bribe officials to enrol in the overseas workers scheme.[41] The Special Rapporteur urges the Government of the Democratic People's Republic of Korea to ensure that workers are allowed to receive adequate wages that are reasonable for the labour they provide, and that they are not subjected to violations of the rights to freedom of movement, expression and association. The Special Rapporteur also calls on Member States that host workers from the Democratic People's Republic of Korea, as well as companies that employ them, to exercise due diligence and put in place specific measures to ensure that international labour and human right standards are upheld.[42]

Persons who have left the Democratic People's Republic of Korea

27. Talking to persons who have left the Democratic People's Republic of Korea allowed the Special Rapporteur to understand some of the human rights violations that motivated their decision to leave. The Special Rapporteur also learned about the challenges that these individuals faced as they braved restrictions on the right to freedom of movement and made the journey out of the country. He was impressed that they were well aware of their rights and that, despite all the obstacles they faced, they looked forward to the future. Most of the women who spoke to the Special Rapporteur were victims of human trafficking. The commission of inquiry estimated that a large percentage of women and girls who cross the border from the Democratic People's Republic of Korea to China unaccompanied become victims of trafficking in persons, mainly for purposes of exploitation in forced marriage.[43] The risk of forced repatriation to and detention in the Democratic People's Republic of Korea during their journey remains high. The Special Rapporteur met with women escapees in the Republic of Korea who had to leave behind in China their children born to Chinese fathers. During the interviews with the Special Rapporteur, these women shared their hope to be reunited with their children. Despite the lack of accurate information concerning the number and location of these children, they remain particularly vulnerable because of their stateless status. In this respect, the Special Rapporteur recalls the conclusion of OHCHR in its report on the involuntary separation of Korean families, in which it stressed that "there are no formal tracing mechanisms that may

[39] Ibid., pp. 477-480.

[40] Shin Chang-Hoon and Go Myong-Hyun, *Beyond the UN COI Report on Human Rights in DPRK* (Asan Institute for Policy Studies, Seoul, 2014), available from http://en.asaninst.org/contents/asan-report-beyond-the-coi-dprk-human-rights-report/.

[41] See also Korea Institute for National Unification, *White Paper 2016*, p. 472.

[42] Guiding Principles on Business and Human Rights, principle 12.

[43] See A/HRC/25/63 and "Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea".

help [women escapees] locate their children in China or advocate for reunion".[64] This is a very serious issue, which warrants urgent attention.

IV. The way forward

28. The Special Rapporteur continues to pursue the two-track strategy advocated by his predecessor, with a focus on engagement with the authorities to promote human rights compliance. Furthermore, addressing human rights violations, particularly allegations of crimes against humanity, requires that perpetrators be held accountable. These two tracks are mutually reinforcing, and a dual approach is necessary to produce tangible and sustainable improvement in the situation of human rights.

29. The Special Rapporteur acknowledges that pursuing this approach is a significant challenge. The successive adoption of sanctions by the Security Council has led to increased isolation of the country. Similarly, the push for accountability, including the call to refer the country to the Office of the Prosecutor of the International Criminal Court, has been met by a confrontational stance by the authorities of the Democratic People's Republic of Korea.

30. Nevertheless, the Special Rapporteur believes that there is a space for implementing the dual approach. In this section, he briefly reviews his own efforts to date and those of key actors who are working to improve the human rights situation in the Democratic People's Republic of Korea.

A. Efforts to engage by the Special Rapporteur

31. Since his appointment on 1 August 2016, the Special Rapporteur has exchanged correspondence with the Permanent Missions of the Democratic People's Republic of Korea in Geneva and New York, inviting them to start a conversation on the human rights situation in the country. The Special Rapporteur submitted an official request to the Permanent Mission in Geneva to conduct a country visit as part of preparations for his field trip to North-East Asia in November 2016. Unfortunately, the Democratic People's Republic of Korea did not grant the request, citing the country's long-standing position against the country mandate, which it perceives as politically motivated. The Special Rapporteur responded by recalling his mandate as an independent expert and urging the Government to consider a possible visit as an opening for better engagement with United Nations human rights mechanisms to promote and protect the rights of all in the country. Notably, in November 2016, on the margins of the Third Committee meetings during the General Assembly, a representative of the Democratic People's Republic of Korea reportedly stated that the Special Rapporteur could visit the country in his personal capacity as a law professor, but not in his official capacity as Special Rapporteur.[65] The Special Rapporteur is ready to continue the conversation on ways to facilitate a country visit in his official capacity. In the past, the Government has cited as one of the reasons for rejecting cooperation with the mandate that the Special Rapporteur's reports "decry the Democratic People's Republic of Korea system and policies, based on distorted information" (see A/HRC/13/13, para. 49). The Special Rapporteur, as a new mandate holder, stresses that the

[64] OHCHR, *Torn Apart: The Human Rights Dimension of the Involuntary Separation of Korean Families* (Geneva, 2016), para. 73.

[65] Press briefing by the Ambassador of the Democratic People's Republic of Korea to the United Nations, Kim In Ryong, 15 November 2016, available from http://webtv.un.org/media/watch/kim-in-ryong-dprk-press-conference-15-november-2016/5211267770001.

best way to overcome allegedly distorted information is through engagement, including by providing access to the country to allow him to receive first-hand information from various stakeholders, including government agencies.

32. While the Democratic People's Republic of Korea has rejected the specific country mandate as being selective and politicized, several special procedure thematic mandates of the Human Rights Council also remain relevant to the country situation. These mandates can provide meaningful assistance to the country in improving the human rights situation. In this respect, and in accordance with a number of recommendations that the Democratic People's Republic of Korea accepted during the second universal periodical review, the Special Rapporteur encourages the Government to establish cooperation with the Special Rapporteurs on the rights of persons with disabilities; extreme poverty and human rights; the negative impact of unilateral coercive measures on the enjoyment of human rights; the right to education; the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the right to food; adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the right to development; trafficking in persons, especially women and children; the promotion and protection of the right to freedom of opinion and expression; the rights to freedom of peaceful assembly and of association; the independence of judges and lawyers; torture and other cruel, inhuman or degrading treatment or punishment; freedom of religion or belief; the promotion of truth, justice, reparation and guarantees of non-recurrence; the Special Rapporteur in the field of cultural rights; the Working Group on the issue of discrimination against women in law and in practice; and the Working Group on Enforced or Involuntary Disappearances, among others.

33. The Special Rapporteur also urges the Democratic People's Republic of Korea to continue to engage with the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women. He also calls on the Government to initiate dialogue with the Committee on Economic, Social and Cultural Rights, the Human Rights Committee and the Committee on the Rights of Persons with Disabilities, reflecting its international obligations as a State party to the respective treaties.

34. Since his appointment in August 2016, the Special Rapporteur has also liaised with Governments that have diplomatic relations with the Democratic People's Republic of Korea and various organizations that provide humanitarian and technical assistance to the country. The aim of these exchanges is to increase the much-needed space for dialogue with the authorities on the implementation of international human rights obligations, particularly the recommendations that the Democratic People's Republic of Korea has accepted as part of the universal periodic review.

35. The Special Rapporteur believes that the time is ripe for the Democratic People's Republic of Korea to take a new approach towards United Nations human rights mechanisms. The Government should seriously consider granting access to these mechanisms, even if gradually. Such a change would be a step-by-step process, based on dialogue, trust-building and mutual confidence. The approach will broaden possibilities for engagement at the international level, including by expanding the space for technical cooperation and increasing opportunities to improve the situation of human rights in the country.

B. Group of independent experts on accountability

36. Pursuant to Human Rights Council resolution 31/18, the United Nations High Commissioner for Human Rights designated two independent experts, Sonja Biserko (Serbia) and Sara Hossain (Bangladesh), to support the work of the Special Rapporteur on the issue of accountability for human rights violations in the Democratic People's Republic

of Korea. The Council mandated the group of experts (a) to explore appropriate approaches to seeking accountability for human rights violations in the Democratic People's Republic of Korea, in particular where such violations amounted to crimes against humanity, as found by the commission of inquiry; and (b) to recommend practical mechanisms of accountability to secure truth and justice for the victims of possible crimes against humanity in the Democratic People's Republic of Korea, including the International Criminal Court.

37. Since their appointment by the High Commissioner in September 2016, the independent experts have visited Geneva, The Hague, Seoul, Tokyo and New York to conduct research and consult with various stakeholders, including scholars in international criminal justice and persons who left the Democratic People's Republic of Korea. Portions of the missions to Geneva and Seoul were conducted jointly with the Special Rapporteur.

38. In its recommendations, presented in an addendum to the present report, the group of independent experts stresses that the approach to pursuing accountability for human rights violations in the Democratic People's Republic of Korea must be multi-pronged and comprehensive, and in line with international norms and standards. The group calls on the international community to continue efforts to seek accountability for crimes against humanity through the International Criminal Court. It highlights that investigation and prosecution of serious crimes are indispensable, as are measures to ensure the right of victims and societies to know the truth about violations, the right of victims to reparations, and guarantees of non-recurrence of violations. The group finds that there is a need to explore the possibility of establishing an ad hoc international tribunal. Additionally, it recommends undertaking coordinated and comprehensive consultations with victims and other relevant stakeholders, starting with those living outside the Democratic People's Republic of Korea. Such consultations would be aimed at seeking their views on accountability for human rights violations in the country, while taking measures to ensure the safety of participants and minimize the risk of retraumatization. The group further calls on the Human Rights Council and the General Assembly to strengthen OHCHR through additional resources, to increase its contribution towards accountability for human rights violations in the Democratic People's Republic of Korea, including by concurrently strengthening its current monitoring and documentation efforts in line with international norms and standards and supporting an assessment by international criminal justice experts of available information and evidence to identify gaps and develop possible investigation and prosecution strategies as well as blueprints for suitable international or internationally assisted court models. The Special Rapporteur agrees with this approach, and invites all relevant stakeholders, including States Members of the United Nations, the Human Rights Council, the United Nations and civil society organizations, to act on the recommendations contained in the report of the group of independent experts and to ensure that serious human rights violations, especially those amounting to crimes against humanity, do not go unpunished.

C. Field-based structure of the Office of the United Nations High Commissioner for Human Rights in Seoul

39. OHCHR-Seoul, with its field-based structure, has continued its activities since its inauguration on 23 June 2015, including providing support to the mandate of the Special Rapporteur. In accordance with Human Rights Council resolution 25/25, OHCHR-Seoul is mandated (a) to monitor and document the human rights situation in the Democratic People's Republic of Korea with a view to ensuring accountability; (b) to enhance engagement and capacity-building with the Governments of all States concerned, civil society and other stakeholders; and (c) to maintain the visibility of the situation of human

rights in the Democratic People's Republic of Korea, including through sustained communications, advocacy and outreach initiatives.

40. OHCHR-Seoul has carried out a wide range of activities, including collecting information through interviews with persons who left the Democratic People's Republic of Korea and from other sources. The office has also undertaken advocacy activities through various platforms, such as social and mainstream media, public events and publications. In a report on the involuntary separation of Korean families OHCHR provides concrete recommendations to States concerned, civil society organizations and the international community to remedy the situation using a victim- and rights-centred approach.[46] The lack of access to the Democratic People's Republic of Korea continues to be a key challenge in the comprehensive gathering of information. In this regard, the Special Rapporteur stresses the importance of engagement by the Government of the Democratic People's Republic of Korea with the office. The Special Rapporteur encourages the authorities to begin exploring areas in which discussion with OHCHR-Seoul could be initiated, such as human rights education.

D. Civil society organizations

41. During visits in 2016 to Geneva (September), New York (October) and the Republic of Korea and Japan (November), the Special Rapporteur met with a large of number of civil society organizations dedicated to improving the human rights and humanitarian situation in the Democratic People's Republic of Korea. The Special Rapporteur was impressed by the diverse methods applied by these organizations to address the complex situation in the Democratic People's Republic of Korea. Some of these groups continue to document cases of violations and explore accountability for gross and systematic human rights violations. Other groups focus on providing humanitarian assistance in ways that may enhance the fulfilment of economic and social rights, particularly for the most vulnerable groups. Notably, these organizations have been able to work with the authorities at the national and local levels to implement programmes that contribute to the realization of some rights. The collaboration between national and international actors on issues concerning persons with disabilities and the joint assessments by the Government and humanitarian agencies after the August 2016 flood were cited as examples of how such work could have a positive impact.

42. The reports by the Government submitted to the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child refer to a number of institutions and organizations with different levels of association with the authorities. Nevertheless, there is reportedly no space in the country for independent civil society organizations. As provided by the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), individuals and non-governmental organizations have an important role to play and a responsibility to promote human rights and fundamental freedoms. The Special Rapporteur stresses that providing an enabling space for independent civil society organizations in the country is indispensable for the Democratic People's Republic of Korea to fulfil its international human rights obligations.

[46] OHCHR, *Torn Apart*.

V. Conclusions and recommendations

43. **The Special Rapporteur continues to pursue the two-track strategy with respect to the human rights situation in the Democratic People's Republic of Korea. He places special emphasis on encouraging engagement between the authorities of the Democratic People's Republic of Korea and the mandate, as well as every other United Nations human rights mechanism. Such engagement is aimed at increasing access to the country, receiving more accurate and comprehensive information and improving compliance by the Government with its treaty obligations. At the same time, addressing human rights violations, particularly allegations of crimes against humanity, requires that perpetrators be held accountable, in the interest of justice and to deter further human rights abuses. In this regard, possible measures for accountability elaborated by the group of independent experts provide important guidance. These two tracks are mutually reinforcing, and a dual approach is necessary to improve the human rights situation. The situation deserves the same level of attention that the continuing escalation of tensions on the Korean peninsula and in North-East Asia has received from the international community, especially from the Security Council, given the close connection between peace, security and human rights.**

44. **The Special Rapporteur is encouraged by the contributions made by multiple actors who are concerned at the situation of human rights in the Democratic People's Republic of Korea. He emphasizes that these initiatives should be conducted as part of a common vision for the promotion and protection of human rights in the country. The overall aim should be to build national understanding of international human rights standards and strengthen the national capacity to ensure that the authorities take steps to end ongoing violations, address past violations and prevent their recurrence. For this reason, it is important that State institutions in the Democratic People's Republic of Korea, in particular the Workers' Party of Korea, take ownership of the recommended policy changes while creating a space for meaningful participation in decision-making by the population.**

45. **The Special Rapporteur urges the Government of the Democratic People's Republic of Korea:**

(a) **To take immediate and effective steps to end gross human rights violations, including the operation of political prison camps;**

(b) **To continue to follow up on the accepted recommendations emanating from the universal periodic review and to cooperate with the United Nations and other relevant actors to facilitate their implementation. The Special Rapporteur believes that a common strategy on effective implementation of these recommendations should be developed, with prioritization of more feasible or relevant recommendations. For example, a large number of States recommended that the Democratic People's Republic of Korea ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, join the International Labour Organization and establish an independent human rights institution;**

(c) **To engage in effective cooperation with United Nations human rights mechanisms, including this mandate holder and thematic mandate holders, and facilitate country visits;**

(d) **To accept all offers of technical cooperation by the international community that may help to promote and protect human rights, including from the Office of the United Nations High Commissioner for Human Rights and its field-based presence in Seoul;**

(c) To resume dialogue with neighbouring countries to resolve outstanding human rights issues of an urgent nature, including those relating to the situation of separated families, people abducted and other missing persons;

(f) To implement without delay the recommendations of the group of independent experts on accountability.

46. The Special Rapporteur calls upon the Human Rights Council:

(a) To implement the recommendations of the group of independent experts on accountability without delay, ensuring that perpetrators of gross violations are held responsible and supporting all victims in their quest for truth and justice;

(b) To continue to support the work of OHCHR, including its field-based structure in Seoul, ensuring that the latter can function with independence, has sufficient financial resources and enjoys full cooperation with relevant Member States;

(c) To urge the Government of the Democratic People's Republic of Korea to engage constructively with the Special Rapporteur and invite him to undertake a visit to the country as soon as possible, without preconditions, in accordance with the terms of reference for country visits by special procedure mandate holders.

47. The Special Rapporteur calls upon Member States:

(a) To continue to engage with the Democratic People's Republic of Korea, in both bilateral and in multilateral forums, to ensure that measures are taken to protect and promote human rights;

(b) To facilitate monitoring efforts, including by the Special Rapporteur and the OHCHR field presence in Seoul, by providing information and access to victims of and witnesses to human rights violations in the Democratic People's Republic of Korea;

(c) To abstain from forcibly repatriating persons who left the Democratic People's Republic of Korea, including women and children, and to protect them from human trafficking and other abuses;

(d) To implement without delay relevant recommendations of the group of independent experts;

(e) To integrate the protection and promotion of human rights in all social, economic, cultural and political partnership projects with the Democratic People's Republic of Korea;

(f) To ensure that a human rights-based approach underpins all cooperation with the Democratic People's Republic of Korea, including in the area of humanitarian assistance, and that political and security considerations do not hinder humanitarian assistance.

48. The Special Rapporteur calls upon the United Nations as a whole to address the grave human rights situation in the Democratic People's Republic of Korea in a coordinated and unified manner, in accordance with the Secretary-General's Human Rights Up Front initiative. The Special Rapporteur particularly calls upon those agencies that conduct humanitarian programmes inside the Democratic People's Republic of Korea to ensure that vulnerable groups, including those who are in detention facilities, prison camps and political prison camps, are able to benefit from their programmes.

49. The Special Rapporteur recognizes the key role of civil society actors in protecting human rights in the Democratic People's Republic of Korea and encourages them to continue developing a balanced, comprehensive and people-centred approach.